

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES T. LAPLANTE,)
)
Plaintiff,)
)
v.) No. 4:04CV1145 TIA
)
JEFFERSON COUNTY, MISSOURI,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on Defendant Jefferson County, Missouri's Motion to Dismiss (Docket No. 17/filed August 31, 2005) and to Compel (Docket No. 19/filed September 27, 2005).

Plaintiff James LaPlante originally filed his Complaint on April 20, 2002, alleging that Defendant Jefferson County, Missouri deprived him of his constitutional rights under the Eighth and Fourteenth Amendments to the United States Constitution. (Cause No. 4:02CV632TIA, Docket No. 1/filed April 30, 2002). In the Complaint, Plaintiff alleges that deputies of the Jefferson County Sheriff's Department arrested him at his house on or about May 1, 1997. At the time of his arrest, booking, and various times thereafter, Plaintiff alleges that he informed the deputies and other personnel of the Sheriff's Department that he is diabetic and had not eaten and taken his medication that day. According to Plaintiff, Defendant's personnel refused to have him examined by a medical technician, refused to monitor his diet, and refused to arrange for him to receive his medication after being confined in the Jefferson County Jail. Later in the day, Plaintiff passed out in his jail cell and suffered injuries to his right shoulder and rotator cuff.

The undersigned dismissed with prejudice the Complaint for failure to prosecute pursuant to Rule 41(b) on June 26, 2003. (Cause No. 4:02CV632TIA at Docket No. 27). On September 17, 2003, the Court granted Plaintiff's Motion to Reconsider and dismissed Plaintiff's Complaint without prejudice and ordered Plaintiff to pay Defendant's costs and attorney's fees. (Id. at Docket No. 31). Plaintiff re-filed the instant Complaint on August 26, 2004. (Docket No. 1). The Case Management Order in relevant part requires that the parties make all initial disclosures required by Rule 26(a)(1) no later than July 20, 2005, and requests for physical or mental examinations of the parties pursuant to Rule 35 and disclosure of expert witnesses no later than August 30, 2005. (Docket No. 15/filed June 2, 2005). To date Plaintiff has failed to comply with any of the deadlines set forth in the Case Management Order, or to respond to either Defendant's Motion to Dismiss or the Court's Show Cause Order of September 14, 2005.

Defendant now moves to dismiss Plaintiffs' Complaint. Plaintiff has not responded to the Defendant's motion even though the time for filing a response has passed, and the undersigned entered an Order directing Plaintiff to show cause.

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, a court may dismiss a case for failure to prosecute or failure to comply with the rules of civil procedure or court orders. The court finds that in this case, dismissal under Rule 41(b) is warranted. Not only did Plaintiff fail to prosecute the case since June 2, 2005, he did not comply with the rules of discovery under the federal rules of civil procedure or with either this Court's Case Management Order or Show Cause Order.

The undersigned finds that dismissal with prejudice is warranted. A review of the Court file shows that, to date, Plaintiff failed to respond to Defendant's Motion to Dismiss, to comply with the Case Management Order, or to respond to the Show Cause Order of September 14, 2005. Plaintiff has never requested any extensions of time or any other relief from this Court.

The Court dismissed the earlier filed case for failure to prosecute. The undersigned will not allow Plaintiff a third bite of the apple.

Accordingly,

IT IS HEREBY ORDERED that Defendant Jefferson County, Missouri's Motion to Dismiss (Docket No. 17/filed August 31, 2005) is **GRANTED**.

IT IS FURTHER ORDERED that Defendant Jefferson County, Missouri's Motion to Compel (Docket No. 19/filed September 27, 2005) is **DENIED AS MOOT**.

Dated this 28th day of September, 2005.

/s/ Terry L. Adelman

UNITED STATES MAGISTRATE JUDGE